

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**MARY RILEY,**

**Defendant.**

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**CASE NO. 8:09CR65**

**MEMORANDUM  
AND ORDER**

This matter is before the Court on a Report and Recommendation (Filing No. 75) of a Magistrate Judge recommending that I accept the Defendant's plea of guilty. There are no objections to the Report and Recommendation. Pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 11.2(d), the Court has conducted a de novo review of the record.

Throughout this case, the record reflects that the parties have assumed that the Defendant faces a maximum of 5 years supervised release. (Filing Nos. 3, 20, 79 at ¶ 13(a), 80, 97 at pp. 9, 14.) However, the statute indicates that the penalty includes "at least" 5 years supervised release. 21 U.S.C. § 841(b).

Because the Court is unable to conclude that the Defendant's plea was knowing, intelligent and voluntary, this matter will be overruled and remanded to the Magistrate Judge for further proceedings.

**IT IS ORDERED:**

1. The Report and Recommendation (Filing No. 75) is overruled;
2. The plea and the plea agreement are not accepted at this time;
3. The order on sentencing schedule (Filing No. 85) is vacated; and
4. This case is remanded to the Magistrate Judge for further proceedings.

DATED this 24<sup>th</sup> day of July, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge